

Supart C—Access to Classified Information

§ 17.41 Access to classified information.

(a) No person may be given access to classified information or material originated by, in the custody, or under the control of the Department, unless the person—

(1) Has been determined to be eligible for access in accordance with sections 3.1–3.3 of Executive Order 12968;

(2) Has a demonstrated need-to-know; and

(3) Has signed an approved nondisclosure agreement.

(b) Eligibility for access to classified information is limited to United States citizens for whom an appropriate investigation of their personal and professional history affirmatively indicated loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information. A determination of eligibility for access to classified information is a discretionary security decision based on judgments by appropriately trained adjudicative personnel. Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States and any doubt shall be resolved in favor of the national security. Sections 2.6 and 3.3 of Executive Order 12968 provide only limited exceptions to these requirements.

(c) The Department of Justice does not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation in granting access to classified information. However, the Department may investigate and consider any matter that relates to the determination of whether access is clearly consistent with the interests of national security. No negative inferences concerning the standards for access may be raised solely on the basis of the sexual orientation of

the employee or mental health counseling.

(d) An employee granted access to classified information may be investigated at any time to ascertain whether he or she continues to meet the requirements for access.

(e) An employee granted access to classified information shall provide to the Department written consent permitting access by an authorized investigative agency, for such time as access to classified information is maintained and for a period of three years thereafter, to:

(1) Financial records maintained by a financial institution as defined in 31 U.S.C. 5312(a) or by a holding company as defined in 12 U.S.C. 3401;

(2) Consumer reports under the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*); and

(3) Records maintained by commercial entities within the United States pertaining to any travel by the employee outside the United States.

(f) Information may be requested pursuant to the employee consent obtained under paragraph (e) of this section only where:

(1) There are reasonable grounds to believe, based on credible information, that the employee or former employee is, or may be, disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power;

(2) Information the Department deems credible indicates the employee or former employee has incurred excessive indebtedness or has acquired a level of affluence that cannot be explained by other information; or

(3) Circumstances indicate that the employee or former employee had the capability and opportunity to disclose classified information that is known to have been lost or compromised to a foreign power or an agent of a foreign power.

§ 17.42 Positions requiring financial disclosure.

(a) The Assistant Attorney General for Administration, in consultation with the Counsel for Intelligence Policy, shall designate each employee, by position or category where possible, who has a regular need for access to